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# MONTANA LEGISLATIVE HISTORY

Chapter 43 1993

Bill H _____ S 90 Original bill & history ____C

H. Committee on State Admin

Hearing Date(s) Jan 26 ✓ C
Jan 25 ✓ C
_____ ____C
_____ ____C

Date Out _____ ____C

S. Committee on State Admin

Hearing Date(s) Jan 15 ✓ C
_____ ____C
_____ ____C
_____ ____C

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

| | | | |
|---|---|---|---|
| 1/28 | 2ND READING PASSED | 45 | 0 |
| 1/29 | 3RD READING PASSED | 47 | 0 |
| | TRANSMITTED TO HOUSE | | |
| 1/30 | FIRST READING | | |
| 1/30 | REFERRED TO HUMAN SERVICES & AGING | | |
| 2/08 | HEARING | | |
| 2/11 | COMMITTEE REPORT—BILL CONCURRED | | |
| 3/02 | 2ND READING CONCURRED | 88 | 9 |
| 3/05 | 3RD READING CONCURRED | 95 | 4 |
| | RETURNED TO SENATE | | |
| 3/10 | SIGNED BY PRESIDENT | | |
| 3/10 | SIGNED BY SPEAKER | | |
| 3/11 | TRANSMITTED TO GOVERNOR | | |
| 3/17 | RETURNED TO SENATE WITH GOVERNOR'S AMENDMENTS | | |
| 3/18 | 2ND READING GOVERNOR'S AMENDMENTS CONCURRED | 49 | 0 |
| 3/19 | 3RD READING GOVERNOR'S AMENDMENTS CONCURRED | 47 | 0 |
| | TRANSMITTED TO HOUSE | | |
| 4/01 | 2ND READING GOVERNOR'S AMENDMENTS CONCURRED | 92 | 2 |
| 4/02 | 3RD READING GOVERNOR'S AMENDMENTS CONCURRED | 95 | 4 |
| | RETURNED TO SENATE | | |
| 4/14 | SIGNED BY PRESIDENT | | |
| 4/14 | SIGNED BY SPEAKER | | |
| 4/15 | TRANSMITTED TO GOVERNOR | | |
| 4/20 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 419 | | |
| | EFFECTIVE DATE: 04/20/93 | | |

SB 90 INTRODUCED BY JACOBSON, ET AL.

CONSTITUTIONAL AMENDMENT TO PROTECT PUBLIC RETIREMENT FUNDS

| | | | |
|---|---|---|---|
| 1/06 | INTRODUCED | | |
| 1/06 | REFERRED TO STATE ADMINISTRATION | | |
| 1/06 | FIRST READING | | |
| 1/15 | HEARING | | |
| 1/16 | COMMITTEE REPORT—BILL PASSED | | |
| 1/18 | 2ND READING PASSED | 48 | 0 |
| 1/19 | 3RD READING PASSED | 49 | 0 |
| | TRANSMITTED TO HOUSE | | |
| 1/20 | FIRST READING | | |
| 1/20 | REFERRED TO STATE ADMINISTRATION | | |
| 1/26 | HEARING | | |
| 1/30 | COMMITTEE REPORT—BILL CONCURRED | | |
| 2/02 | 2ND READING CONCURRED | 93 | 6 |
| 2/04 | 3RD READING CONCURRED | 95 | 3 |
| | RETURNED TO SENATE | | |
| 2/10 | SIGNED BY PRESIDENT | | |
| 2/11 | SIGNED BY SPEAKER | | |
| | (THIS BILL IS A PROPOSED CONSTITUTIONAL AMENDMENT AND DOES NOT REQUIRE GOVERNOR'S SIGNATURE) | | |
| | CHAPTER NUMBER 43 | | |
| | EFFECTIVE DATE: 02/11/93—SECTIONS 3 & 4 | | |

EFFECTIVE DATE: 01/01/95—SECTIONS 1 & 2, CONTINGENT UPON VOTER APPROVAL

SB 91 INTRODUCED BY CHRISTIAENS, ET AL.

EXTEND WORKERS' COMPENSATION COVERAGE TO PRERELEASE, DIVERSIONARY PROGRAMS

| | | | |
|---|---|---|---|
| 1/07 | INTRODUCED | | |
| 1/07 | REFERRED TO LABOR & EMPLOYMENT RELATIONS | | |
| 1/07 | FIRST READING | | |
| 1/07 | FISCAL NOTE REQUESTED | | |
| 1/12 | FISCAL NOTE RECEIVED | | |
| 1/13 | FISCAL NOTE PRINTED | | |
| 1/14 | HEARING | | |
| 1/27 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 1/28 | 2ND READING PASSED | 28 | 14 |
| 1/29 | 3RD READING PASSED | 32 | 15 |
| | TRANSMITTED TO HOUSE | | |
| 1/30 | FIRST READING | | |
| 1/30 | REFERRED TO LABOR & EMPLOYMENT RELATIONS | | |
| 3/02 | HEARING | | |
| 3/16 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 3/27 | 2ND READING CONCURRED | 93 | 1 |
| 3/30 | 3RD READING CONCURRED | 97 | 3 |
| | RETURNED TO SENATE WITH AMENDMENTS | | |
| 4/05 | 2ND READING AMENDMENTS CONCURRED | 50 | 0 |
| 4/06 | 3RD READING AMENDMENTS CONCURRED | 50 | 0 |
| 4/13 | SIGNED BY PRESIDENT | | |
| 4/15 | SIGNED BY SPEAKER | | |
| 4/16 | TRANSMITTED TO GOVERNOR | | |
| 4/21 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 457 | | |
| | EFFECTIVE DATE: 10/01/93 | | |

SB 92 INTRODUCED BY KLAMPE

REVISE COUNTY PARK DISTRICT LAW

| | | | |
|---|---|---|---|
| 1/07 | INTRODUCED | | |
| 1/07 | REFERRED TO LOCAL GOVERNMENT | | |
| 1/07 | FIRST READING | | |
| 1/19 | HEARING | | |
| 1/22 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 1/23 | 2ND READING PASSED | 41 | 3 |
| 1/25 | 3RD READING PASSED | 45 | 5 |
| | TRANSMITTED TO HOUSE | | |
| 1/26 | FIRST READING | | |
| 1/26 | REFERRED TO LOCAL GOVERNMENT | | |
| 3/09 | HEARING | | |
| 3/10 | COMMITTEE REPORT—BILL CONCURRED | | |
| 3/10 | PLACED ON CONSENT CALENDAR | | |
| 3/12 | 3RD READING CONCURRED | 91 | 5 |
| | RETURNED TO SENATE | | |
| 3/16 | SIGNED BY PRESIDENT | | |
| 3/16 | SIGNED BY SPEAKER | | |
| 3/17 | TRANSMITTED TO GOVERNOR | | |
| 3/22 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 144 | | |
| | EFFECTIVE DATE: 10/01/93 | | |

## HEARING ON SB 90

**Opening Statement by Sponsor:**

Sen. Jacobsen explained SB 90 is a bill that Sen. Brown and Sen. Jacobsen co-sponsor which would protect the funding integrity of Montana's teachers and public employees retirement systems. There are two large amounts of money that potentially could be used as one-time revenue. One is the retirement fund and the other is the coal trust that is protected by a 3/4 vote of this body. The time is past for using one-time monies. It is important to the people who depend on the retirement systems to be able to rely on the fact that their funds will be protected by the Legislature and will be sound in the future.

**Proponents' Testimony:**

Tom Bilodeau, Research Director of the Montana Education Association, representing Montana Public Employee Pension Security Coalition (PEPSCO) gave written testimony (EXHIBIT #1, EXHIBIT #2, EXHIBIT #3).

John Denherder, President of PEPSCO, explained the coalition is a broad base of associations of active and retired public employees. The affiliated associations that were present to endorse SB 90 were: Tom Bilodeau, Montana Education Association; Gene Allen, Association of Montana Retired Public Employees; Tom Schneider, Montana Public Employees Association; Natalie Fitzpatrick, Montana Retired Teachers Association; John Malee, Montana Federation of Teachers and State Employees; Tom Foley, American Federation of State, County and Municipal Employees; Bill Flinner, Montana Sheriffs and Peace Officers Association. The Public Pension Security Act of 1993 was initiated by PEPSCO. The act was drafted by a cooperative process involving administrative and legal staff, review by the Public Employees Retirement System, and the Teachers Retirement System, Montana Board of Investments, and the Legislative Council. SB 90 has also been endorsed by Governor Racicot.

Tom Schneider, Montana Public Employees Association, said the money in the retirement systems are already committed to future benefits of the members of those systems. It seems like a lot of money but none of the systems are actuarial 100% funded at this point and for any of that money to be used for another purpose would put us in a situation similar to the one in something called workers' compensation. SB 90 is a good vehicle to protect against that situation.

Dave Senn, Executive Director of Teachers' Retirement Board gave written testimony (EXHIBIT #4).

Mark Cress, Administrator of the Public Employees Retirement System, spoke on behalf of the Public Employees Retirement Board

in favor of SB 90. The board, in a recent meeting, voted to endorse this constitutional referendum and has worked with the proponents of the referendum on the language and legal content of the bill. As trustees of these public employees pension funds, the board members believe that preservation of those funds deserve constitutional protection.

Natalie Fitzpatrick, Montana Retired Teachers and School Personnel Association, spoke in favor of SB 90. In the September state meeting, there was a great deal of concern expressed by the membership of the fear of what happened in other states happening in Montana, the raiding of pension funds in order to pay current expenses. So a resolution was passed unanimously asking that we work together with other groups to safeguard the public pension fund. She said SB 90 expresses all the concerns of the group and she urged the passage of the bill.

John Malee, represented the Montana Federation of Teachers and the Montana Federation of State Employees, and urged support of SB 90.

Gene Allen, Public Employees Retirement System retiree and member of the Associated Montana Retired Public Employees System, urged passage of SB 90.

Don Judge, Montana State AFL-CIO, pointed out to the committee that Congress has already begun moving to protect the private retirement systems from raids that have occurred over the last dozen years that have literally destroyed a number of private sector pension systems, particularly in the auto industry and the steel industry and some of the other major manufacturing industries in this country. The downside to the destruction of those systems is not just the effect that it has on the workers and their families but also the fact that the federal government guarantees the payment of those pensions which is beginning to drive the federal deficit as well. SB 90 would be a chance to pre-empt that here in Montana and he encourages submitting it to the voters.

Bill Holdorf, Butte Retired Teacher, represented the Butte Retired Teachers Association. They would like to go on record totally in favor of SB 90.

**Opponents' Testimony:**

None.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

None.

**Closing by Sponsor:**

Sen. Jacobsen stated that there are 35 states that are facing the same kinds of budget deficits as Montana. Many of those have dipped into their retirement funds or have underfunded actuarially their funds. Montana is fortunate to be able to act rather than react to a problem, in this instance, to be able to protect those funds that have been protected in the past and to do it in a constitutional manner.

## EXECUTIVE ACTION ON SB 90

**Motion:** Sen. McClernan moved SB 90 DO PASS.

**Discussion:** Sen. Fritz asked Tom Bilodeau if there was any other way to protect these funds short of an amendment to the Constitution. Mr. Bilodeau said there are some statutory limitations, potentially statutory protections, however, it is also subject to the whim of future legislative action. This is an adequate way of protecting these funds.

**Vote:** Motion that SB 90 PASS Carried Unanimously.

There was discussion on the Governor's appointments. There was a motion to have the resolution drawn for confirmation of the first 12 appointments. The motion carried unanimously.

## ADJOURNMENT

**Adjournment:** 11:50 a.m.

Senator Eleanor Vaughn
SENATOR ELEANOR VAUGHN, Chair

Deborah Stanton
DEBORAH STANTON, Secretary

EV/ds

# ROLL CALL

SENATE COMMITTEE STATE ADMINISTRATION DATE 1-15-93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Sen. Eleanor Vaughn | ✓ | | |
| Sen. Jeff Weldon | ✓ | | |
| Sen. Jim Burnett | ✓ | | |
| Sen. Harry Fritz | ✓ | | LL |
| Sen. John Hertel | ✓ | | |
| Sen. Bob Hockett | ✓ | | |
| Sen. Henry McClernan | ✓ | | |
| Sen. Bob Pipinich | ✓ | | |
| Sen. Bernie Swift | ✓ | | |
| Sen. Larry Tveit | ✓ | | |
| David Niss | ✓ | | |
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FC08

Attach to each day's minutes

# SENATE STANDING COMMITTEE REPORT


January 15, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Bill No. 90 (first reading copy -- white), respectfully report that Senate Bill No. 90 do pass.

Signed: Eleanor Vaughn
Senator Eleanor Vaughn, Chair

M- Amd. Coord.
___ Sec. of Senate

111313SC.Sma

## PUBLIC PENSION SECURITY ACT OF 1993 -- SB90

## CONSTITUTIONAL AMENDMENTS BY LEGISLATIVE REFERENDUM

Article XIV, section 8, of the Montana Constitution provides for constitutional amendment by public referendum initiated by the Legislature. Pursuant to this provision, any proposed amendment must receive an affirmative vote by two-thirds of the Legislature before it is referred to the people for popular vote at the next regularly scheduled general election. Article VI, section 10, provides that bills proposing constitutional amendments need not be submitted to the Governor for signature.

Title 13, chapter 27, MCA, contains the general law relating to procedures to be followed by the Secretary of State and other officials when submitting a constitutional amendment (and other ballot issues) to the electorate. Article XIV, section 8, provides that, unless the amendment provides otherwise, the amendment will become effective on July 1 following certification of the election returns.

Enactment of the proposed "Public Pension Security Act of 1993" by the current 53rd Legislature would refer the bill for referendum or popular vote at the general election scheduled for November of 1994. If passed by popular vote of the people, the constitution's amendment would be effective as of the amendment's stated effective date -- January 1, 1995.

**Montana Constitution - Article XIV (1972)**

Section 8. Amendment by legislative referendum.
Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first of July after certification of the election returns unless the amendment provides otherwise.

The "Public Pension Security Act of 1993" was initiated by "PEPSCo "-- a coalition of groups which represent both active and retired public employees. PEPSCo groups are identified on the letterhead of this flyer. The Act was drafted through a cooperative process involving administrative and legal staff review by the Public Employee Retirement System (PERS) and Teacher Retirement System (TRS), the Montana Board of Investments and the Legislative Council.

The Public Pension Security Act of 1993 (SB90) exemplifies the best aspects of bipartisan, sound fiscal management and good government. SB90 is sponsored by Senator Judy Jacobson (D.,Butte) and by Senator Bob Brown (R.,Whitefish). The Act has been specifically approved by formal action of both the PERS and TRS Boards and it has been endorsed by Governor Marc Racicot.

PEPSCo urges immediate enactment of SB90 by the 53rd Legislature.

# PEPSCo

## Montana Public Employee Pension Security Coalition

*A coalition concerned about protecting public employee pensions and the pension funds*

*1232 East Sixth Avenue • Helena, MT 59601*
*(406) 442-4250*

**SB90 -- PUBLIC PENSION SECURITY ACT OF 1993**

**MEA/MEA-R**
Montana
Education
Association

**AMRPE**
Association
of
Montana
Retired
Public
Employees

**MPEA**
Montana
Public
Employees
Association

**MRTA**
Montana
Retired
Teachers
Association

**AFT-MFSE**
Montana
Federation
of
Teachers
and
State
Employees

**AFSCME**
American
Federation

State,
County
and
Municipal
Employees

PEPSCo strongly supports SB90 and urges immediate adoption of this legislation.

SB90, sponsored by Senators Judy Jacobson and Bob Brown, proposes constitutional protection for both the current assets and future contributions deemed actuarially necessary to provide for retirement benefits promised to current and future retirees enrolled in Montana's state and local government public pension systems. Further, the bill -- if passed by public referendum -- would amend Montana's Constitution to require the governing boards of Montana's public pension systems to administer the systems and manage system assets as "fiduciaries" -- i.e. in a fiscally responsible manner -- for pension program members and their beneficiaries.

SB90 proposes to guarantee the continued fiscal integrity of Montana's public pension systems and to assure the availability of long-promised pension benefits to current and future State and local government retirees. The essence of SB90 is that public retirement revenues will be collected, maintained and distributed exclusively for the purposes of administering public pension systems and providing pension benefits for public employees and their beneficiaries.

The Public Pension Security Act would constitutionally prohibit use of current public pension assets or of future pension revenues for purposes unrelated to pension administration or benefit distribution. If enacted, the Act would prevent the types of "stop-gap" pension-raiding and pension underfunding engaged in by a dozen other states in recent years. (See e.g. The Role of Pension Funding Policy, NEA (1992).

SB90 -- the Public Pension Security Act of 1993:

- assures responsible management of Montana's pension systems by explicitly authorizing pension system governing boards to act as fiduciaries for pension members and beneficiaries;
- maintains the proven effective day-to-day investment responsibility of pension assets by the Montana Board of Investments for systems administered by the state;
- stabilizes the tax burdens expected of the public-at-large, as well as government employer and employee payroll taxpayers; and
- significantly diminishes the threat of jeopardizing future pension benefits for public employees.

SB90 represents sound fiscal policy and responsible pension administration practice.

SENATE STATE ADMIN.
EXHIBIT NO. 1
DATE 1-15-93
BILL NO. SB90

SENATE STATE ADMIN.
EXHIBIT NO. 2
DATE 1-18-93
BILL NO. SB 90

# Examples of Changes in Retirement System Financing 1991—1992

| | |
|---|---|
| *rizona* | Change in actuarial funding method |
| *alifornia* | Transfer of assets out of retirement system; proposal to change actuarial assumptions (PERS) |
| *onnecticut* | Change in assumed investment rate of return; deferral of contributions; proposal to abolish cost-of-living adjustment |
| *linois* | Deferral of contributions |
| *laine* | Deferral of contributions; change in assumed investment rate of return |
| *innesota* | Change in assumed investment rate of return; proposal to change salary scale assumption |
| *ew Hampshire* | Change in actuarial funding method; change in assumed investment rate of return |
| *ew Jersey* | Proposals to change the asset valuation method, actuarial funding method, and actuarial assumptions |
| *ew York* | Change in actuarial funding method |
| *klahoma* | Proposals to change actuarial assumptions |
| *regon* | Possible decrease in employer contributions |
| *nnsylvania* | Change in actuarial assumptions; proposal to change amortization period |
| *ode Island* | Deferral of employer contributions; change in assumed investment rate of return |
| *xas* | Decrease in employer contributions (Teacher Retirement System) |
| *rginia* | Change in assumed investment rate of return; proposal to change asset valuation method |

# THE ROLE OF PENSION FUNDING POLICY

## In Protecting Public Employee Retirement Systems

Exhibit #3
1-15 93
SB-90
Senate State Administration

The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

National Education Association
Research Division

4
1-15-93
SB 90

SENATE BILL 90

TESTIMONY
Teachers' Retirement Board
Presented by David L. Senn

Much has been said and written recently regarding funding of public pensions plans. Members are concerned that plan assets may be used or contributions diverted to purposed other than to fund promised benefits. Senate Bill 90 addresses the primary concern of many public employees, i.e., **Benefit Security.** Benefit Security relies on asset accumulation, future contributions to the plan and on protection of assets and contributions. Members must have confidence that adequate assets will be available to pay benefits and the guarantee that future contributions necessary to maintain the actuarial stability of the plan will not be jeopardized.

I would like to share with you a quote from the December 16, 1991 Congressional Research Service Report for Congress.

> "Pension funds covering 15.7 million State and local government workers and retirees currently hold asset worth about $878 billion; those assets may reach $1 trillion by 1993. Although some public plans are not adequately funded, most State plans and large municipal plans have substantial assets to back up their benefit obligations. At the same time, State and local governments are facing crushing fiscal problem, and some are seeking relief by reducing or deferring contributions into their pension plans to free up cash for other purposes. Those who are concerned that these actions may jeopardize future pension benefits suggest that the Federal Government should regulate State and local government pension fund operations to ensure adequate funding."

Since 1938 public pension plans have been required to comply with the exclusive benefit rule of the Internal Revenue Code in order to qualify for tax exempt status. This rule requires that the assets of the pension plan be maintained in a trust for the exclusive benefit of plan participants and their beneficiaries and prohibits using any part of the assets or income for any purpose other than for the exclusive benefit of participants or their beneficiaries. Nevertheless, enforcement of this rule is problematic because the only sanction for violation is revocation of the plan's tax exemption, resulting in members being taxed on the value of their accrued benefits.

Senate Bill 90 addresses the concerns of those who question the sincerity of the State to guarantee adequate funding but more importantly it says to Montana's public employees and the electorate that the State and the legislature will not divert the assets or income of the plans to any other purpose other than for the exclusive benefit of it's members. Senate Bill 90 meets the requirements of guaranteeing Benefit Security and we ask for your support.

DATE 1-15-93

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: SB 90, SB 87

| Name | Representing | Bill No. | Check One: Support | Check One: Oppose |
|---|---|---|---|---|
| Thomas Schneider | IMPEA | SB 90 | X | |
| Don Judge | MT STATE AFL-CIO | SB 87 | | X |
| Allie Thomas | MRTA | SB 9 | X | |
| Bill Holdorf | Butte Retired Teachers | SB 90 | ✓ | |
| Edward Wagner | Retired State | SB 90 | ✓ | |
| Charlotte Thomas | MRTA | SB 90 | ✓ | |
| John M. VanHeuden | AMRPE + PEPSCo | SB 90 | ✓ | |
| Natalie Fitzpatrick | Mont Ret. Retired Teachers | SB 90 | ✓ | |
| Gene Allen | AMRPF | SB 90 | ✓ | |
| John Malee | M.F.T./MFSE | SB 90 | X | |
| Tom C. Foley | AFSCME | SB 90 | X | |
| TOM BILODEAU | MEA - PEPSCO | SB 90 | X | |
| Don Judge | MT STATE AFL-CIO | SB 90 | X | |
| David Senn | Teachers' Retirement Board | SB 90 | X | |
| Mark Cress | Public Empl. Retirement | SB 90 | X | |
| | | | | |

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 53rd LEGISLATURE - REGULAR SESSION

## COMMITTEE ON STATE ADMINISTRATION

**Call to Order:** By DICK SIMPKINS, on January 26, 1993, at 9:04 a.m.

### ROLL CALL

**Members Present:**

Rep. Dick Simpkins, Chair (R)
Rep. Wilbur Spring, Vice Chair (R)
Rep. Ervin Davis, Vice Chair (D)
Rep. Beverly Barnhart (D)
Rep. Pat Galvin (D)
Rep. Bob Gervais (D)
Rep. Harriet Hayne (R)
Rep. Gary Mason (R)
Rep. Brad Molnar (R)
Rep. Bill Rehbein (R)
Rep. Sheila Rice (D)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Norm Wallin (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Sheri Heffelfinger, Legislative Council
Dorothy Poulsen, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**
Hearing: SB 90; HJR 5
Executive Action: None.

### HEARING ON SB 90

Opening Statement by Sponsor:

**SEN. JUDY JACOBSON, Senate District 36, Butte,** introduced SB 90, a constitutional amendment to provide for the investment of public pension assets and to require that all public pension

trust funds be protected and exclusively administered in an actuarially sound manner. **SEN. JACOBSON** said the intent of the bill is to protect all public retirement funds from being used to solve the state's financial difficulties. She noted the state had two "pots of money" left: the coal trust and the pension funds. The coal trust is protected by a requirement that three-quarters of the Legislature must vote to approve any expenditure; however, pension funds are not similarly protected. **SEN. JACOBSON** noted that other states have tapped into or under-funded their public retirement systems. Montana's public retirement funds are currently actuarially sound, and passage of SB 90 would ensure their future viability.

**Proponents' Testimony**:

**SEN. BOB BROWN, Senate District 2, Whitefish,** reported that nationally there is $756 billion in public retirement trust funds. He stated these funds have been threatened in other states, and the concern is that Montana, in a crisis, might be tempted to use the pension funds as a revenue source. The trust funds in Montana total about $3 billion and are currently unprotected. He urged the committee to pass SB 90.

**Tom Bilodeau, Research Director, Montana Education Association, and Secretary-Treasurer, Montana Public Employee Pension Security Coalition (PEPSCo),** stated SB 90 addresses all public pensions in Montana at the state and local level. **Mr. Bilodeau** contended that the bill would (1) provide constitutional protection to existing assets within the retirement trust funds; (2) protect actuarially required contributions in the future; and (3) give fiduciary authority to the various retirement boards so the funds can be managed on a fiscally sound basis. He stated that PEPSCo views SB 90 as sound government and good fiscal management. He reported that the bill is supported by all the major active and retired employee associations. Additionally, SB 90 has been reviewed and approved by both the Teachers' Retirement System Board and the Public Employees' Retirement System Board. **Mr. Bilodeau** said SB 90 had also been reviewed by Governor Racicot's office and the Board of Investments. He noted that the bill maintains the day-to-day investment authority of the Board of Investments. **EXHIBIT 1**

**Tom Schneider, Montana Public Employees' Association,** pointed out that, except for the sheriffs' system, no public retirement system in Montana is currently fully funded. If the state were to take money from the systems or to divert contributions to the systems, then these unfunded liabilities would endanger the retirement systems. He urged support of HB 90.

**John Den Herder, President, PEPSCo,** introduced the representatives of the affiliate associations to PEPSCo: Bill Campbell, Montana Education Association; Art Whitney, Association of Montana Retired Public Employees; Tom Schneider, Montana Public Employees Association; Dick Marberg, Montana Retired

Teachers Association; John Malee, Montana Federation of Teachers and State Employees; Tom Foley, American Federation of State, County and Municipal Employees.

**Mark Cress, Administrator, Public Employees Retirement Division,** stated he came on behalf of the Public Employees' Retirement Board (PERD). He reported the board was involved in the drafting of SB 90, and they support the constitutional amendment. He noted that PERD administers eight retirement systems involving 12,500 retirees and 26,000 current contributors. The largest of the systems, Public Employees Retirement System (PERS), is not fully funded with only 70% of the assets needed for current obligations. He urged the committee to pass HB 90.

**David Senn, Executive Director, Teachers' Retirement System (TRS),** presented written testimony in support of SB 90. **EXHIBIT 2**

**John Malee, Montana Federation of Teachers and State Employees,** expressed their support of SB 90.

**Darrell Holzer, Montana State AFL-CIO,** stated their support of SB 90.

**Dick Marberg, Montana Retired Teachers Association,** stated their support of SB 90.

**Art Whitney, Association of Montana Retired Public Employees,** stated their support of SB 90.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

**REP. MOLNAR** asked **Tom Bilodeau** whether SB 90 protected the retirement funds from "raids" by retroactive benefits given to members. **Mr. Bilodeau** responded that the bill establishes a fiduciary responsibility for retirement boards which would constrain internal "raids" as well as political or economic manipulation of actuarial assumptions.

**REP. SPRING** asked **Tom Schneider** whether the unfunded liabilities of the retirement systems have changed in the last ten years. **Mr. Schneider** responded that the unfunded liabilities have decreased in the last decade.

**REP. WALLIN** asked **Mark Cress** to explain why the various retirement systems differed. **Mr. Cress** responded that the answer was complicated, but, generally, differences in contributions and benefits resulted in system differences.

**REP. WALLIN** asked **Mr. Cress** whether SB 90 was an attempt to avoid the situation with social security in which funds are used to finance government. **Mr. Cress** agreed, noting that Montana has not borrowed from the retirement funds. He related that in other states problems have occurred because retirement contributions have been diverted, retirement funds have been declared excess, and assumptions have been manipulated to underfund systems. **Mr. Cress** stated SB 90 is trying to avoid a similar situation in Montana.

**REP. WALLIN** noted that Montana cannot borrow money to meet general obligations. **Mr. Cress** stated other states have diverted money intended for pensions.

**REP. SIMPKINS** asked **Mark Cress** to explain the meaning of the term "actuarially sound." **Mr. Cress** explained that "actuarially sound" does not mean fully funded but rather means there is a plan in place to fund the system within a reasonable period of time. He noted that the view of a reasonable period of time has changed. At one time 40 years was considered reasonable, but now 30 years is considered the standard.

**REP. SIMPKINS** noted one of the retirement systems has a 35-year amortization of its unfunded liability. He asked **Mr. Cress** whether requiring systems to be actuarially sound would require the State of Montana to contribute funds to the level of a 30-year amortization period. **Mr. Cress** said that what is required is an adequate contribution by system members; he noted certified actuaries currently consider the system actuarially sound. **Mr. Cress** stated that retirement boards would probably express the desire to have amortization periods shortened, but the amendment does not obligate the state to change the funding arrangements for retirement systems.

**REP. SIMPKINS** rephrased his concern to **Mr. Cress** asking whether the standards for actuarial soundness could be changed and the Legislature forced to appropriate funds to meet the new definitions. **Mr. Cress** responded that retirement boards could not arbitrarily change actuarial standards; these standards are based on general practice. He reiterated his belief that the State could not be suddenly obligated to fund the retirement systems. **Mr. Cress** deferred to **Mr. Senn** for further explanation.

**Mr. Senn** explained that "actuarially sound" is an industry term which refers to more than the amortization period; "actuarially sound" includes measures such as whether there is a funding source and the adequacy of the funding source. **Mr. Senn** noted that all the retirement systems are considered sound. He further noted that the obligation of the Legislature under SB 90 will be to provide adequate funding when it passes bills which enhance retirement benefits. The Legislature will be required to maintain the actuarial soundness of the system rather than adding to the liability without adequate funding. **Mr. Senn** concluded he

did not think SB 90 would require any additional funding in any of the public pension plans which exist today.

**REP. SIMPKINS** asked **Mr. Senn** whether the recent bill passed by the committee to extend benefits to Korean veterans in the teachers' retirement system would have required funding by the Legislature under SB 90. **Mr. Senn** responded "no;" the bill did not change the soundness of the system's funding.

**REP. MOLNAR** asked **Mr. Senn** who would be responsible for funding the retirement systems if the actuaries were as wrong about the retirement systems as they were about the workers' compensation system. **Mr. Senn** responded that retirement systems are very different from workers' compensation. The liabilities of retirement systems are more predictable because both members and benefits are known. If the actuaries were incorrect, however, the Legislature would be responsible for funding the public retirement systems.

**REP. SIMPKINS** suggested to **SEN. JACOBSON** that SB 90 addressed two different issues: actuarial soundness and the protection of funds. **SEN. JACOBSON** responded that in other states two kinds of actions have occurred: (1) the funds have been raided; and (2) the systems have been deliberately underfunded. The bill would prevent both situations in Montana. **REP. SIMPKINS** asked **SEN. JACOBSON** whether, based on her experience, she thought SB 90 would obligate the State to contributing millions of dollars to the funds. **SEN. JACOBSON** responded she had no such fear. She noted the wariness of the Legislature because of problems with workers' compensation, but she reiterated the retirement systems were very different from workers' compensation. She referred to the unpredictability of workers' compensation and noted that the retirement systems allowed for planning.

**REP. WALLIN** asked **SEN. JACOBSON** whether she knew why the unfunded liabilities varied among the different retirement systems. She stated that she did not know. **Mr. Senn** explained the reason the systems differed was because of different enhancements granted to systems. As an example, **Mr. Senn** pointed out the differences in benefit enhancements in the teachers' retirement system, such as credit given for military service, which have resulted in a longer amortization period for that particular system.

**REP. SIMPKINS** referred to the judges' retirement system which has been found actuarially unsound and asked whether the Legislature would need to fund the system under SB 90. **Mark Cress** responded the problem with that particular system is the source of funding--court fees--which is insufficient now and expected to be insufficient in the future. He stated that funding the judges' retirement system will need to be addressed whether SB 90 passes or not.

Closing by Sponsor:

**SEN. JACOBSON** stated that in discussion of SB 90 on the Senate floor a question regarding the "make whole" provision had arisen. She stated the provision had no effect on the bill. She urged passage of the bill. **REP. DAVIS** agreed to carry the bill.

## HEARING ON HJR 5

The committee recessed at 9:50 a.m. and reconvened in Room 405 for a joint hearing with the Senate on HJR 5. **(Refer to Senate State Administration Minutes dated January 26, 1993.)**

## ADJOURNMENT

**Adjournment:** 12:00 noon.

DICK SIMPKINS, Chair

DOROTHY POULSEN, Secretary

DS/DP

HOUSE OF REPRESENTATIVES

STATE ADMINISTRATION COMMITTEE

ROLL CALL DATE January 26, 1993

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| REP. DICK SIMPKINS, CHAIR | ✓ | | |
| REP. WILBUR SPRING, VICE CHAIR | ✓ | | |
| REP. ERVIN DAVIS, VICE CHAIR | ✓ | | |
| REP. BEVERLY BARNHART | ✓ | | ✓ |
| REP. PAT GALVIN | ✓ | | |
| REP. BOB GERVAIS | ✓ | | |
| REP. HARRIET HAYNE | ✓ | | |
| REP GARY MASON | ✓ | | |
| REP. BRAD MOLNAR | ✓ | | |
| REP. BILL REHBEIN | ✓ | | |
| REP. SHEILA RICE | ✓ | | |
| REP. SAM ROSE | ✓ | | |
| REP. DORE SCHWINDEN | ✓ | | |
| REP. CAROLYN SQUIRES | ✓ | | |
| REP. JAY STOVALL | ✓ | | |
| REP. NORM WALLIN | ✓ | | |
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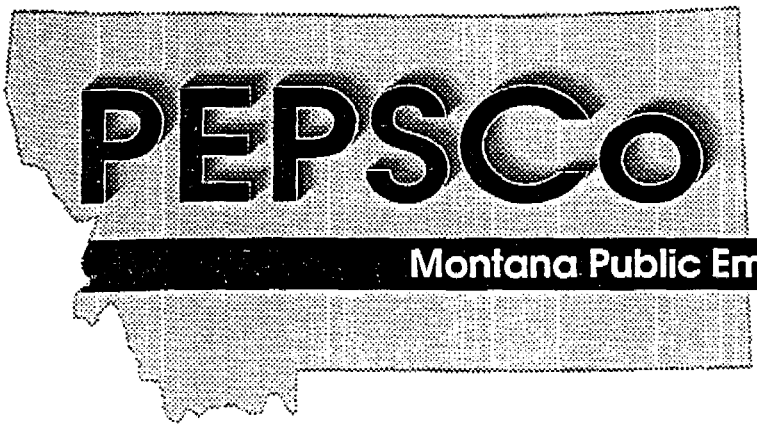


*A coalition concerned about protecting public employee pensions and the pension funds*

*1232 East Sixth Avenue • Helena, MT 59601*
*(406) 442-4250*

**SB90 -- PUBLIC PENSION SECURITY ACT OF 1993**

**MEA/MEA-R**
Montana Education Association

**AMRPE**
Association of Montana Retired Public Employees

**MPEA**
Montana Public Employees Association

**MRTA**
Montana Retired Teachers Association

**MFT-MFSE**
Montana Federation of Teachers and State Employees

**AFSCME**
American Federation of State, County and Municipal Employees

PEPSCo strongly supports SB90 and urges immediate adoption of this legislation.

SB90, sponsored by Senators Judy Jacobson and Bob Brown, proposes constitutional protection for both the current assets and future contributions deemed actuarially necessary to provide for retirement benefits promised to current and future retirees enrolled in Montana's state and local government public pension systems. Further, the bill -- if passed by public referendum -- would amend Montana's Constitution to require the governing boards of Montana's public pension systems to administer the systems and manage system assets as "fiduciaries" -- i.e. in a fiscally responsible manner -- for pension program members and their beneficiaries.

SB90 proposes to guarantee the continued fiscal integrity of Montana's public pension systems and to assure the availability of long-promised pension benefits to current and future State and local government retirees. The essence of SB90 is that public retirement revenues will be collected, maintained and distributed exclusively for the purposes of administering public pension systems and providing pension benefits for public employees and their beneficiaries.

The Public Pension Security Act would constitutionally prohibit use of current public pension assets or of future pension revenues for purposes unrelated to pension administration or benefit distribution. If enacted, the Act would prevent the types of "stop-gap" pension-raiding and pension underfunding engaged in by a dozen other states in recent years. (See e.g. The Role of Pension Funding Policy, NEA (1992).

SB90 -- the Public Pension Security Act of 1993:

> assures responsible management of Montana's pension systems by explicitly authorizing pension system governing boards to act as fiduciaries for pension members and beneficiaries;
>
> maintains the proven effective day-to-day investment responsibility of pension assets by the Montana Board of Investments for systems administered by the state;
>
> stabilizes the tax burdens expected of the public-at-large, as well as government employer and employee payroll taxpayers; and
>
> significantly diminishes the threat of jeopardizing future pension benefits for public employees.

SB90 represents sound fiscal policy and responsible pension administration practice.

EXHIBIT 1
DATE 1/26/93
HB SB 90

## PUBLIC PENSION SECURITY ACT OF 1993 -- SB90

## CONSTITUTIONAL AMENDMENTS BY LEGISLATIVE REFERENDUM

Article XIV, section 8, of the Montana Constitution provides for constitutional amendment by public referendum initiated by the Legislature. Pursuant to this provision, any proposed amendment must receive an affirmative vote by two-thirds of the Legislature before it is referred to the people for popular vote at the next regularly scheduled general election. Article VI, section 10, provides that bills proposing constitutional amendments need not be submitted to the Governor for signature.

Title 13, chapter 27, MCA, contains the general law relating to procedures to be followed by the Secretary of State and other officials when submitting a constitutional amendment (and other ballot issues) to the electorate. Article XIV, section 8, provides that, unless the amendment provides otherwise, the amendment will become effective on July 1 following certification of the election returns.

Enactment of the proposed "Public Pension Security Act of 1993" by the current 53rd Legislature would refer the bill for referendum or popular vote at the general election scheduled for November of 1994. If passed by popular vote of the people, the constitution's amendment would be effective as of the amendment's stated effective date -- January 1, 1995.

**Montana Constitution - Article XIV (1972)**

Section 8. Amendment by legislative referendum.
Amendments to this constitution may be proposed by any member of the legislature.
If adopted by an affirmative roll call vote of two-thirds of all the members thereof,
whether one or more bodies, the proposed amendment shall be
submitted to the qualified electors at the next general election.
If approved by a majority of the electors voting thereon,
the amendment shall become a part of this constitution on
the first of July after certification of the election returns
unless the amendment provides otherwise.

The "Public Pension Security Act of 1993" was initiated by "PEPSCo "-- a coalition of groups which represent both active and retired public employees. PEPSCo groups are identified on the letterhead of this flyer. The Act was drafted through a cooperative process involving administrative and legal staff review by the Public Employee Retirement System (PERS) and Teacher Retirement System (TRS), the Montana Board of Investments and the Legislative Council.

The Public Pension Security Act of 1993 (SB90) exemplifies the best aspects of bipartisan, sound fiscal management and good government. SB90 is sponsored by Senator Judy Jacobson (D.,Butte) and by Senator Bob Brown (R.,Whitefish). The Act has been specifically approved by formal action of both the PERS and TRS Boards and it has been endorsed by Governor Marc Racicot.

PEPSCo urges immediate enactment of SB90 by the 53rd Legislature.

EXHIBIT 2
DATE 1/26/93
HB SB90

# SENATE BILL 90

## TESTIMONY
Teachers' Retirement Board
Presented by David L. Senn

Much has been said and written recently regarding funding of public pensions plans. Members are concerned that plan assets may be used or contributions diverted to purposed other than to fund promised benefits. Senate Bill 90 addresses the primary concern of many public employees, i.e., **Benefit Security.** Benefit Security relies on asset accumulation, future contributions to the plan and on protection of assets and contributions. Members must have confidence that adequate assets will be available to pay benefits and the guarantee that future contributions necessary to maintain the actuarial stability of the plan will not be jeopardized.

I would like to share with you a quote from the December 16, 1991 Congressional Research Service Report for Congress.

> "Pension funds covering 15.7 million State and local government workers and retirees currently hold asset worth about $878 billion; those assets may reach $1 trillion by 1993. Although some public plans are not adequately funded, most State plans and large municipal plans have substantial assets to back up their benefit obligations. At the same time, State and local governments are facing crushing fiscal problem, and some are seeking relief by reducing or deferring contributions into their pension plans to free up cash for other purposes. Those who are concerned that these actions may jeopardize future pension benefits suggest that the Federal Government should regulate State and local government pension fund operations to ensure adequate funding."

Since 1938 public pension plans have been required to comply with the exclusive benefit rule of the Internal Revenue Code in order to qualify for tax exempt status. This rule requires that the assets of the pension plan be maintained in a trust for the exclusive benefit of plan participants and their beneficiaries and prohibits using any part of the assets or income for any purpose other than for the exclusive benefit of participants or their beneficiaries. Nevertheless, enforcement of this rule is problematic because the only sanction for violation is revocation of the plan's tax exemption, resulting in members being taxed on the value of their accrued benefits.

Senate Bill 90 addresses the concerns of those who question the sincerity of the State to guarantee adequate funding but more importantly it says to Montana's public employees and the electorate that the State and the legislature will not divert the assets or income of the plans to any other purpose other than for the exclusive benefit of it's members. Senate Bill 90 meets the requirements of guaranteeing Benefit Security and we ask for your support.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

State Administration COMMITTEE BILL NO. SB 90

DATE 1/26/93 SPONSOR(S) Senator Jacobson

PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|---|---|---|---|
| TOM BLODGETT | MEA / PEPSC (Public Employee Pension Security Coalition) | X | |
| Thomas E Schneider | MPEA / PEPSC (Mt. Public Employees Assn) | X | |
| Dick Marberg | MRTA (Mt. Retired Teachers Assn) | X | |
| John Maleo | M.F.T / MFSE (Mt. Fed of Teachers) | X | |
| Darrell Holzer | MT. ST. AFL-CIO | X | |
| Matt Hartman | Assn Mt Ret Public Employees | X | |
| Tom Foley | AFSCME (Am. Fed of State, County, Municipal Employees) | X | |
| David Sam | T. [illegible] Retirement + | X | |
| Wm. DeKeulenaer | AMRPE (Assn Mt. Retired Public Employees) | X | |
| Jack E Cohn | Mont Ret Teachers | X | |
| Phil Campbell | Mont Ed Assoc | X | |
| Mike Cress | PERD (Public Employees Retirement) | X | |
| Mike Thomas | MEA | X | |
| [illegible] | [illegible] Co-Chair of Dist 37 | X | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Senator Brown
Ed

# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 53rd LEGISLATURE - REGULAR SESSION

## COMMITTEE ON STATE ADMINISTRATION

**Call to Order:** By **DICK SIMPKINS, CHAIRMAN,** on January 29, 1993, at 8:30 a.m.

### ROLL CALL

**Members Present:**

Rep. Dick Simpkins, Chairman (R)
Rep. Wilbur Spring, Vice Chairman (R)
Rep. Ervin Davis, Vice Chairman (D)
Rep. Beverly Barnhart (D)
Rep. Pat Galvin (D)
Rep. Bob Gervais (D)
Rep. Harriet Hayne (R)
Rep. Gary Mason (R)
Rep. Brad Molnar (R)
Rep. Bill Rehbein (R)
Rep. Sheila Rice (D)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Norm Wallin (R)

**Members Excused:** Rep. Carolyn Squires

**Members Absent:** None.

**Staff Present:** Sheri Heffelfinger, Legislative Council
Dorothy Poulsen, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: HB 247; HB 239; HB 227
Executive Action: SB 90; SB 36; HB 292 (postponed); HB 166; HB 247

### EXECUTIVE ACTION ON SB 90

**Motion:** **REP. WALLIN MOVED SB 90 BE CONCURRED IN.**

**Discussion:**

**REP. WALLIN** stated he had spoken to a retired teacher who was very pleased that protection of the retirement systems was being considered.

**REP. REHBEIN** asked whether a fiscal note was required. **REP. SIMPKINS** responded that the bill does not involve the shifting of any benefits.

**Vote: SB 90 BE CONCURRED IN.** Motion carried unanimously with **REP. SQUIRES** voting by proxy.. **EXHIBIT 1**

## EXECUTIVE ACTION ON SB 36

**Motion: REP. SPRING MOVED SB 36 BE CONCURRED IN.**

**Motion/Vote: REP. RICE** moved to amend SB 36 to include the coal board and the hard-rock mining impact board. **EXHIBIT 2** Motion carried unanimously with **REP. SQUIRES** voting by proxy.

**Motion/Vote: REP. MASON** moved to amend SB 36 to change the implementation date to July 1, 1993. Motion carried unanimously with **REP. SQUIRES** voting by proxy.

**Motion/Vote: REP. RICE MOVED SB 36 BE CONCURRED IN AS AMENDED.** Motion carried unanimously with **REP. SQUIRES** voting by proxy.

## EXECUTIVE ACTION ON HB 292

**Discussion:**

**Sheri Heffelfinger** recounted that **Mr. Evilsizer**, staff attorney for the Public Service Commission (PSC), had testified against an amendment offered by the utilities on the basis the amendment was unconstitutional. The amendment sought to change "may adopt" to "shall adopt" which **Mr. Evilsizer** seemed to suggest was unconstitutional because it mandated the PSC adopt rules. **Ms. Heffelfinger** stated that the unconstitutional aspect was the "revised editions." She said the Legislature cannot delegate authority to an agency to adopt editions which have yet to be published. She concluded the committee has two options: (1) keep the original language of the bill; or (2) amend the bill and mandate the PSC to adopt specific editions of the National Electrical Safety Code (NESC). **EXHIBIT 3**

**REP. MASON** asked whether killing the bill would have the same effect. **REP. RICE** responded that without HB 292 the PSC is restricted to the 1977 edition of the Safety Code.

HOUSE STANDING COMMITTEE REPORT

January 29, 1993



Mr. Speaker: We, the committee on State Administration report that Senate Bill 90 (third reading copy -- blue) be concurred in .

Signed: _____
Dick Simpkins, Chair

Carried by: Rep. Davis

Committee Vote: